

C R (Cal) Carrington  
Director — Federal Regulatory Matters

EX PARTE OR LATE FILED

**NYNEX**

April 26, 1996

RECEIVED

APR 26 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**Ex Parte**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

**Re: CS Docket No. 96-46, Open Video Systems**

Dear Mr. Caton:

Today, Messrs. Bernd Pfeiffer, Jerry Udwin and I, representing NYNEX Corporation, met with Ms. Meredith Jones and Messrs. John Logan, Gary Laden and Rick Chessen of the Commission's Cable Services Bureau (Bureau) to discuss issues in the above referenced proceeding. The purpose of the meeting was to provide the Bureau with NYNEX's view of the Open Video System concept and its potential, given the proper regulatory flexibility, to become a viable competitor in the video services marketplace. The attached charts served as the basis for the discussion.

If you have any questions regarding this matter, I can be reached at the address or telephone number listed above.

Sincerely,



Attachments

cc: M. Jones  
J. Logan  
G. Laden  
R. Chessen

No. of Copies rec'd  
List ABCDE

0+1



---

---

# Open Video Systems

Potential Wireline Competitors  
to Cable Companies.

# Open Video Systems --

---

## Areas of Discussion --

- MVPD Competitive Situation
- OVS Competitive Positioning
  - » OVS “Rules”
- OVS Market Positioning
  - » Wholesale / Retail
- OVS Access to Programming

# MVPDs -- Competitive Positioning

---

- The Video Programming market is not competitive --
  - » Wired Cable is still the primary and dominant vehicle for providing Video Programming to homes ... “In most markets, a single cable system remains the primary distributor of multichannel video programming services. ... [existing] competitive rivalry ... is insufficient to constrain the market power of incumbent cable systems. FCC’s Second Annual Report to Congress -- CS 95-61 - 12/11/95
  - » “Cable Overbuild” has not been a workable business model.
  - » Cable is being “de-regulated” -- (1996 Act sec. 301) & CS Docket 96-85 ...

# MVPDs -- Competitive Positioning

---

- o Congress is looking for more competitors --
  - » OVS has the potential to bring competition to the MVPD marketplace --
    - “...the conferees hope that this approach [reduced regulatory burdens of Sec. 653] will encourage common carriers to deploy open video systems and introduce vigorous competition in entertainment and information markets.” Conference Committee Report
  - » Consumers are looking for more choices as well as better services and prices.
- o Rules that create robust OVSs will allow the FCC to report a different outcome to Congress in the future.

# OVS -- Competitive Positioning

---

## o OVS Rules must be flexible....

- » “The conferees recognize that telephone companies need to be able to choose from among multiple video entry options to encourage entry, and so systems under this section are allowed to tailor services to meet the unique competitive and consumer needs of individual markets.” Conference Committee Report
- » “The conferees recognize that common carriers that deploy open systems will be new entrants in established markets and deserve lighter regulatory burdens to level the playing field.” Conference report
- » “Those rules [VDT rules including 214’s] implemented a rigid common carrier regime ... and thereby created substantial obstacles to the actual operation of open video systems.”  
Conference report

# OVS -- Competitive Positioning

---

## o Rules can be flexible --

- » “Title II like” prescriptive rules and other front-loaded regulation for untested OVS services and technologies would severely chill the building of OVS -- and thus keep those who “suggest” them as the only providers of wired video programming.
- » Municipalities and Franchise Authorities must not be allowed to re-create the franchise process “thru the back door” of fees, permits and PEG channels.
- » The Commission should rely on its complaint resolution powers and create a complaint process to resolve any disputes as they may arise.

# OVS -- Market Positioning Flexibility

---

- OVS Operators may market their features directly to end-users or to OVS Programmers.
  - » OVS platform features (transport, Must Carry/Retrans, security, programmer selection) may be marketed by the Operator on a “wholesale basis” to Programmers/Packagers.
  - » OVS Programmers/Packagers can combine these features with their programming and navigation systems to sell to end users.
  - » End Users can then purchase a “complete package” from the Programmer/Packager of their choice.



# OVS -- Access to Programming

---

- o Program owners should be required to make programming available to OVS Programmers/Packagers.
  - » Programmer actions similar to those which prompted Sect. 628 (47 USC 548) are rampant.
    - Satellite is covered, but ...
    - Refusal to deal for Regional Sports and Retransmission are in evidence ... Tele-TV Reply Comments
  - » Programming will be carried on OVS only if it is available to all MVPDs on the OVS.

# OVS -- Access to Programming

---

- o Broadcasters should be limited to a single selection for “Must Carry/Retransmission” per ADI for all MVPDs.
  - » “If one or more franchise areas served by a cable system overlaps with one or more franchise areas served by another cable system, television broadcast stations are required to make the same election for both cable systems.” 47 CFR 76.64(g)